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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

13 Cr. 616 VB

5 RIZVE AHMED,

6 Defendant.

7 -----x

8 March 4, 2015

12:10 p.m.

9 White Plains, N.Y.

10 Before:

11 HON. VINCENT L. BRICCETTI,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

United States Attorney for the

15 Southern District of New York

EMILY RAE WOODS

16 BENJAMIN ALLEE

Assistant United States Attorneys

17 BRAD HENRY

18 Attorney for Defendant

19 KERWIN JOHN, DOJ

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1 THE COURTROOM DEPUTY: United States v. Rizve Ahmed.

2 MS WOODS: Emily Rae Woods for the government. With
3 me is Benjamin Allee and Special Agent Kerwin John from the
4 Department of Justice.

5 MR. HENRY: Brad Henry for Mr. Ahmed. Good afternoon.

6 THE COURT: Good afternoon, everybody. Have a seat,
7 please. This matter is on for sentencing today, the defendant
8 having pleaded guilty to bribery of a public official and
9 conspiracy to commit wire fraud and honest services fraud, two
10 separate counts, Counts 3 and 4 of the indictment respectfully.

11 I've reviewed the following materials in preparation
12 for sentencing. The presentence report dated January 8, 2015
13 from probation officer, or prepared by probation officer Sarah
14 K. Willette. Plea agreement dated October 15, 2014. Defense
15 counsel's sentencing memorandum dated February 19, 2015 as well
16 as the letters and materials attached thereto. I've also gone
17 back and reread the declaration submitted by the defendant in
18 June of 2014 in support of his motion to suppress which is
19 relevant to the guidelines calculation in this case. And I've
20 also reviewed the government's sentencing memorandum dated
21 March 2, 2015.

22 Has anything else been submitted that I failed to
23 mention? Ms Woods?

24 MS WOODS: No, your Honor.

25 THE COURT: Mr. Henry?

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1 MR. HENRY: No. Thank you, your Honor.

2 THE COURT: Mr. Henry, have you read the presentence
3 report and discussed it with your client?

4 MR. HENRY: I have.

5 THE COURT: Mr. Ahmed, have you read the presentence
6 report?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you discussed it with your attorney?

9 THE DEFENDANT: Yes.

10 THE COURT: Ms Woods, have you read the presentence
11 report?

12 MS WOODS: Yes.

13 THE COURT: The presentence report reflects the
14 sentencing range as follows. The base offense level according
15 to the PSR is 12. Guideline section 2C1.1(a)(2). A two-level
16 upward adjustment for more than one bribe. A ten-level upward
17 adjustment because the value of the payments to be obtained by
18 the public official exceeded \$120,000. That's 2C1.1(b)(2) and
19 2B1.1(b)(1)(F). Four-level upward adjustment because the
20 offense involves a public official in a high level or sensitive
21 position. That's 2C1.1(b)(3). A three-level upward adjustment
22 because the victim was a member of the immediate family of a
23 government officer or employee and the offense was motivated by
24 such status. That's 3A1.2(a)(1)(C) and (a)(2). A two-level
25 upward adjustment for obstruction of justice based on false

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1 affidavit or declaration under penalty of perjury submitted in
2 support of the motion to suppress. 3C1.1. Three-level
3 downward adjustment for acceptance of responsibility.

4 Therefore, the final offense level according to the
5 PSR is 30. And at Criminal History Category I, the sentencing
6 range is 97 to 121 months imprisonment, the supervised release
7 range is one to three years, and the fine range is \$15,000 to
8 \$150,000.

9 Does the government have any objection to the factual
10 statements in the PSR?

11 MS WOODS: No, your Honor.

12 THE COURT: Does the defendant have any objection to
13 the factual statements in the PSR? And I'll carve out that
14 question, the discussion of whether the official victim
15 enhancement applies. Putting any objections related to that to
16 the side, do you have any other objection to any of the factual
17 statements in the PRS?

18 MR. HENRY: No, your Honor.

19 THE COURT: There being no dispute as to the facts,
20 setting aside for the moment the question of the official
21 victim enhancement, the Court adopts the factual statements in
22 the PSR as the Court's own findings of fact for the purposes of
23 sentence. Do you have any other objections to the PSR or its
24 guidelines calculations?

25 MS WOODS: No.

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1 THE COURT: Does the defendant have any other
2 objections to the PSR or its guidelines calculations, putting
3 aside for the moment the official victim issue?

4 MR. HENRY: No, your Honor.

5 THE COURT: Okay. Let's deal with some of these
6 issues. First of all, of course I dealt with this in the
7 preceding sentencing hearing involving Mr. Thaler, but this is
8 a separate proceeding. First of all, the parties agree that
9 the offense involved more than one bribe, such that there is a
10 two-level upward adjustment. Of course, it was only one
11 payment for a thousand dollars. And it's clear from what I've
12 seen anyway that there were negotiations regarding additional
13 large payments but in the end those payments were never
14 actually made. So the question is, and I'd like counsel to
15 tell me what their presumably agreed-upon position is, tell me
16 why this adjustment applies, meaning the two-level adjustment
17 for more than one bribe, and the related question is why the
18 ten-level adjustment based on the value of the payments to be
19 obtained applies. And again, by agreement the parties have
20 said that the value of the payments exceeded \$120,000. They've
21 agreed on this. And I'd like to hear a little bit more on the
22 record as to why the parties agree these two adjustments apply,
23 when we had one actual payment and where some of these text
24 messages that are quoted verbatim in the government's brief
25 seem to suggest that the parties were still negotiating the

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1 important terms of this deal, the most important of which is
2 how much money was involved. Ms Woods.

3 MS WOODS: Yes, your Honor. The more than one bribe
4 enhancement applies here despite the fact that there was only
5 one single cash payment of one thousand dollars because that
6 payment was in exchange for multiple official acts. As the
7 defendant has admitted, multiple documents were turned over as
8 a result of that cash bribe payment that related to Individual
9 Number 1.

10 The second objective of that bribe payment was to
11 incentivize Special Agent Lustyik to provide his official
12 assistance in interfering with an investigation involving an
13 ally of Mr. Ahmed's political party. Because that payment was
14 in exchange for two discrete official acts it would qualify as
15 more than one bribe under the enhancement.

16 In addition, under an alternative theory, the
17 government would maintain that this enhancement would apply
18 despite the fact there was a single payment because the parties
19 agreed together to an arrangement whereby Mr. Ahmed would
20 provide a \$40,000 retainer fee and \$30,000 monthly in exchange
21 for continued transmission of sensitive internal law
22 enforcement information relating to Individual Number 1. And
23 the support for that is, as your Honor mentioned, the text
24 messages between the parties, as well as this defendant's own
25 admission at the time he was arrested when he was voluntarily

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1 interviewed by investigating agents.

2 THE COURT: That answers, I take it that answers both
3 questions, why the two-level upward adjustment applies to more
4 than one bribe, and why the ten-level upward adjustment applies
5 to the value. Payments to be received exceeding \$120,000.

6 MS WOODS: That's right, your Honor.

7 THE COURT: Mr. Henry, do you agree with the
8 government's analysis as to why these two enhancements apply in
9 this case?

10 MR. HENRY: We agree.

11 THE COURT: That's sufficient for me. As I've said,
12 we are very fortunate that all the lawyers in this case are
13 highly competent professionals whose judgment I trust. And if
14 the lawyers believe based on their analysis of the evidence and
15 the facts and circumstances with which they're far more
16 familiar than I am that those adjustments should apply, in
17 other words they both say they should apply, then that's good
18 enough for me. And I'm not in the business of second-guessing
19 agreements between competent counsel. That would send the
20 wrong message. That would counter the institutional incentive
21 to encourage counsel to, to the extent possible, compromise
22 their differences and come up with agreements that will
23 facilitate the disposition of cases. So I accept those.

24 There's also a three-level upward adjustment which the
25 government contends applies under 3A1.1(a)(1)(C) because

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1 according to the government the victim here was a member of the
2 immediate family of a government officer and the offense of
3 conviction was motivated by such status. Probation has agreed
4 with that position. But my understanding is, Mr. Henry, that
5 you disagree with that position. I saw that you were in the
6 courtroom earlier when I ruled on this issue in connection with
7 Mr. Thaler's case. I'll tell you right now I don't intend to
8 rule differently in this case. But it is a different case for
9 purposes of sentencing so you're welcome to say anything you
10 wish at this time.

11 MR. HENRY: I would rely on our written submission in
12 regard to that.

13 THE COURT: Is it correct that you were here before
14 when I addressed this issue earlier?

15 MR. HENRY: Yes. I was here, heard everything, and we
16 agree with the Court and your analysis as well.

17 THE COURT: I read the parties' respective submissions
18 and the cases cited therein. I find that the official victim
19 enhancement does not apply under the circumstances of this
20 case. It strikes me as illogical to apply the enhancement in a
21 bribery case where the victim, in this particular bribery case
22 anyway, is the public itself, because the bribery of a public
23 official is intended to and in fact does compromise the
24 integrity of that official. That's what Mr. Ahmed has been
25 convicted of; both counts relate to that. Perhaps you might

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1 say that the victim is the United States. It's that the
2 confidential information that was disclosed belonged to the
3 United States, physically was in the United States, in
4 particular the FBI. So perhaps the victim is the United States
5 for that reason. But I don't see how any individual was the
6 victim of the offenses of conviction here. And 3A1.2 clearly
7 applies to victims who are individuals.

8 The government's argument is that Individual 1, the
9 person described as the victim, was the victim because he was
10 the son of the Prime Minister of Bangladesh and Ahmed wanted to
11 obtain confidential information with which to embarrass or
12 humiliate Individual 1 politically, perhaps even to expose as
13 corrupt Individual 1, or his family, and then that Ahmed was
14 doing this because Individual 1 and his mother, the Prime
15 Minister of Bangladesh, belonged to the ruling party of
16 Bangladesh, while Ahmed and his associates belonged to the
17 party currently out of power, formerly in power but currently
18 out of power in Bangladesh.

19 There's a number of references in the indictment to
20 e-mails between among Mr. Lustyik, Mr. Thaler, Mr. Ahmed about
21 corruption allegations involving Individual Number 1 and it
22 seems to me that what was going on here was a desire to
23 embarrass Individual 1 and his mother and ultimately that may
24 have been Mr. Ahmed's goal. But the gist of the bribery scheme
25 or the bribery offense was, which is Count 3, was the

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1 corruption of an FBI agent. And the gist of the conspiracy to
2 commit honest services fraud, which was Count 4, was to deprive
3 the citizens of the United States, not the citizens of
4 Bangladesh, of their right to the honest services of Agent
5 Lustyik.

6 So these are the offenses of conviction here and Ahmed
7 was not convicted of potentially other crimes such as making
8 threats against Individual 1 or his family or attempting to
9 assault or kidnap him or harming him in some either way. If
10 that's what this case was about and there was evidence of that
11 and he was convicted of that, then Individual 1 would be a
12 victim. But he's not a victim of the offenses of conviction
13 and 3A1.2 does not apply for that reason alone.

14 Before I move onto something else, I will say and I
15 want to make it clear for the record that Ahmed's goal, to
16 embarrass or humiliate Individual 1 by releasing confidential
17 information about Individual 1, is certainly relevant to
18 sentencing. It's really, to say the least, objectionable,
19 maybe even abhorrent conduct. And to say the least, it's a
20 serious matter to corrupt an FBI agent in order to achieve that
21 kind of goal or to obtain dirt on a political opponent. But as
22 I've said, it's the corruption of the agent not the use of the
23 dirt that is the gist of the offenses of conviction in this
24 case.

25 I do believe that the government's attempt to have the

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1 Court find that the three-level adjustment for official victim
2 applies is an attempt to put a square peg in a round hole. It
3 just doesn't quite fit and I reject it. There are other
4 reasons why 3A1.2 doesn't apply. First of all, the information
5 obtained was not owned by or created by Individual 1, it was
6 not taken from or obtained from Individual 1, so in that sense
7 he's not a victim. Moreover, I'm not at all persuaded that the
8 official victim enhancement was intended to apply to a foreign
9 official or official's family. The government has cited no
10 controlling or even persuasive authority to support their
11 argument on this point.

12 I read the cases that are with cited in the
13 government's brief. The Kim case is a district court opinion
14 which is not binding on me in which the district court judge
15 said, without any citation to authority or reference to any
16 underlying legislative history relating to the deliberations of
17 the Sentencing Commission that the Commission would have
18 included United Nations employees had that fact scenario been
19 presented to them. Honestly I don't get it. I don't see why
20 he thinks that. But it's clearly not binding and it's
21 definitely not persuasive.

22 The government also cites the case of Lavario, a case
23 out of the Fifth Circuit, making reference to a finding in
24 *dicta*, of course you can't find in *dicta*, but there is *dicta* in
25 that case suggesting that 3A1.2 might apply to a foreign law

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1 enforcement agent who has been assaulted by the defendant. Of
2 course we don't have any assault here, and Mr. Wazed is not a
3 foreign law enforcement agent. In any event, that case did
4 not turn on that 3A1.2 issue at all, so that's why that
5 discussion of the case was *dicta* and is not persuasive or
6 controlling here.

7 There's nothing in 3A1.2 to suggest that it applies to
8 foreign officials and although I don't have anything to cite
9 to, it's just my sense based on my experience with the
10 guidelines and the Sentencing Commission that the Commission
11 did not have foreign officials in mind when it drafted this
12 guideline, which has been around for a long time, and there's
13 nothing in the historical record that suggests that the
14 Sentencing Commission ever considered applying this to foreign
15 officials, particularly because, and I think Mr. Henry alludes
16 to this in his brief, there are plenty of federal statutes that
17 address criminal conduct directed at federal officials or the
18 families of federal officials. And it just seems to me it's a
19 matter of common sense that that's what the Sentencing
20 Commission was addressing when they drafted this particular
21 guideline.

22 I will also say for the record that the government's
23 contention that Ahmed in fact sought to kidnap and physically
24 harm an individual is a stretch. I just don't feel there's
25 enough evidence that's been presented to me for me to make that

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1 finding. Ahmed made conflicting statements about what he
2 intended to do with respect to Individual 1 when he was
3 interviewed following his arrest a year and a half or so after
4 the bribery scheme in this case had petered out and that's
5 contained in Exhibit A to the government's brief, particularly
6 on page 7 -- again, this was the memorandum of interview of
7 Ahmed following his arrest in this case. And he was asked of
8 course about involvement in this case but he was also asked
9 about his involvement with a private investigator by the name
10 of Steve that he hired after the Lustyik/Thaler conspiracy had
11 petered out, and in the context of being asked about his
12 relationship with Steve, according to the memo of interview,
13 Ahmed told Steve that he wanted his help in obtaining private
14 security for BNP officials in Bangladesh, I guess that's the
15 initials for the party that Mr. Ahmed, a United States citizen
16 of Bangladeshi origin, supports. Of course, he has the right
17 to do that. As an aside, he can support anybody he wants. In
18 the future it might be better for him to support parties here
19 in the United States, the country of which he is a citizen.

20 In any event, he was asked about BNP party officials
21 and Ahmed also allegedly told Steve that he wanted his help
22 regarding a plan to scare and hurt Individual 1. And it also
23 says in the report that Ahmed initially told the investigators
24 that he was just kidding about such a plan. But when he was
25 questioned further, and I know what that means because I've

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1 been involved in the criminal justice system for sometime, so
2 when an agent says when questioned further, I know what that
3 really means is that they didn't buy it and they were very
4 aggressive, and that's perfectly fine, there's nothing wrong
5 with being aggressive, it's just softened a bit when it says
6 something like "when questioned further," Ahmed acknowledged
7 that his intent was genuine when he asked Steve for help to
8 hurt and kidnap but not kill Individual Number 1. Steve said
9 that was possible but they didn't discuss it any further.

10 That's the support for this contention and as I said
11 earlier, Ahmed's overall intentions with respect to Individual
12 1 are to say the least unkind and highly relevant to sentencing
13 in this case. But I don't believe that there's sufficient
14 evidence that he really did seek to kidnap and physically harm
15 Individual 1. As I said, the statements he made about it were
16 conflicting. At first he said he did, then he said he didn't.
17 I don't know which is true. I'm not going to make a finding
18 that based on these conflicting statements somebody who had
19 nothing to do with this case, meaning Steve, supports the
20 government's contention here.

21 Everything that I've been presented in this case, the
22 text messages and the other things that I've seen -- and I
23 acknowledge that I'm definitely not as familiar with the case
24 as the lawyers are, but all I can do is rely on what I've been
25 provided with -- based on what I've been provided with, this

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1 case is all about furthering Ahmed's political aims, getting
2 confidential information to expose what Ahmed apparently
3 thought was corrupt behavior by the ruling party and otherwise
4 embarrass Individual Number 1. And that's all terrible
5 behavior and as I said relevant to sentencing. But there's no
6 talk in these exchanges about doing physical harm to Individual
7 1. So I cannot find that that objective was part of the
8 offense of conviction here.

9 Also, as I said, Ahmed's post-arrest statements
10 related to the discussions he had with the private investigator
11 he hired to get dirt on Individual 1 long after breaking off
12 his relationship with Lustyk and Thaler. So even if those
13 comments did reflect a intent to cause physical harm in
14 connection with his dealings with Stever, and as I said, I'm
15 not sure that they do reflect that intent, but even if they do,
16 it does not appear that an intent to physically harm Individual
17 Number 1 based on those statements was ever a part of the
18 bribery conspiracy or the bribery or the conspiracy to commit
19 honest services fraud of which Mr. Ahmed has been convicted.

20 Finally, it's also clear, fortunately, that Individual
21 1 was in fact never physically harmed nor was there ever an
22 attempt to harm him. According to Individual 1 as reflected in
23 the presentence report, the release of confidential information
24 could have led to harm to him and his family and I think that's
25 probably true, it could have. But there's nothing in his

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1 victim impact statement that suggests he was ever harmed, even
2 reputationally or politically.

3 For all these reasons I find that the official victim
4 enhancement does not apply in this case.

5 Are there any other guidelines issues as such that
6 need to be resolved or is it just that one at this point?
7 Ms Woods?

8 MS WOODS: There are no other.

9 MR. HENRY: That's the only one, your Honor.

10 THE COURT: Thank you. Based on the parties'
11 agreement as set forth in their plea agreement as well as my
12 review of the presentence report and my own evaluation of the
13 guidelines, I find and conclude that the final offense level is
14 27, Criminal History Category I, which yields a sentencing
15 range of 70 to 87 months imprisonment. There's been no motion
16 for any guidelines-based departure from the applicable range.

17 Does the government wish to be heard on sentencing?

18 MS WOODS: Yes, your Honor. Speaking first to the
19 nature and circumstances of this offense, the public official
20 involved in this bribery scheme in which Mr. Ahmed
21 participated, was a high level special agent with the FBI. He
22 was working in the counter intelligence unit and he was a 24
23 year veteran of the force. As a counter intelligence special
24 agent he had top secret FBI security clearance and access to
25 vast quantities of highly sensitive, classified internal law

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1 enforcement information. Mr. Ahmed sought out this individual
2 and promised him cash bribes in order to get information on
3 Mr. Ahmed's political opponent, to embarrass him, and to
4 publicize that he had been investigated by the United States.
5 Mr. Ahmed's actions were not a momentary lapse in judgment.
6 Instead, the conduct in which he participated took place over a
7 period of months, it involved multiple in-person meetings,
8 multiple communications via texts and via e-mail. Mr. Ahmed
9 even went to the extent of developing false FBI credentials and
10 business cards and fictitious FBI reports that were marked
11 classified in furtherance of the scheme. He did succeed in
12 getting his hands and highly confidential information that
13 contained personal identifying information about Mr. Wazed, who
14 spoke earlier in court today, and who is a political figure in
15 Bangladesh and does fear for his safety on a regular basis.

16 THE COURT: Ms Woods, I'm sorry to just interrupt. He
17 did speak earlier. But he's not going to speak here. So I
18 don't want the record to reflect that I'm relying in any way,
19 shape, or form on what Mr. Wazed said in a separate proceeding
20 in this case.

21 MS WOODS: The government would actually ask that you
22 do rely on what you said at the earlier sentencing. We talked
23 to Mr. Henry about it, he was present at the earlier sentencing
24 proceeding, and he does not object.

25 THE COURT: If that's the case, then that's a

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1 different kettle of fish.

2 MR. HENRY: I will say he has not testified in this
3 proceeding, so it is not -- what he said there is not a part of
4 the official record. I understand the Court has heard what
5 Mr. Wazed has said. You can't for lack of a better phrase put
6 the toothpaste back in the tube. I understand that it may come
7 into play. So for those reasons, what Mr. Wazed said in that
8 proceeding are fine. But I do agree with the Court, they are
9 not part of this official proceeding.

10 THE COURT: They're not a part of the proceeding but
11 what he said was consistent with what he said to the probation
12 officer in the presentence report. So we certainly know about
13 that. He just fleshed it out and gave some sort of context of
14 who he is and who his family is and his history and his
15 relationship to his mother. But none of that is inconsistent
16 with what he said previously. So you don't have any, you're
17 not asking me to unring a bell. I heard what I heard. I don't
18 really think it adds to what was already in the PSR. You're
19 not asking me to, like we say to a jury sometimes, "you shall
20 disregard that." You're not asking me to do that?

21 MR. HENRY: No, your Honor.

22 MS WOODS: The bottom line is that the information
23 that Mr. Ahmed was able to obtain as a result of the bribery
24 scheme involved Mr. Wazed's personal and Social Security
25 number, his address where he and his family lived, his bank

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1 account balances, activity and account numbers, and other
2 sensitive information, including Mr. Wazed's interactions with
3 authorities here in the United States, such as the Customs and
4 Border Patrol Agency and the FBI.

5 Moreover, Mr. Ahmed sold the information he received
6 upstream. He paid a thousand dollars for the three documents
7 that we've discussed in the previous proceedings and sold it in
8 exchange for \$30,000 and took efforts to gain additional
9 information. The scheme itself ended as we've noted without
10 the exchange of additional cash bribes for information.
11 However, it did not end because Mr. Ahmed had a change of heart
12 or decided to stop participating in the criminal activity.
13 Instead, it ended because around that same time, Mr. Ahmed
14 found a different source, the private investigator with whom he
15 was working, and he paid that private investigator four
16 thousand dollars in exchange for information on Mr. Wazed. And
17 when he went back to Special Agent Lustyik and e-mailed him a
18 photograph with a fistful of cash at that point, he was
19 rejected by Special Agent Lustyik through Thaler for having
20 waited too long. So your Honor should not consider the fact
21 that the scheme didn't come to full fruition as a mitigating
22 factor for Mr. Ahmed considering that by every account he tried
23 to continue the scheme.

24 THE COURT: Basically what you're saying is that in
25 the end there was only a thousand dollars paid but it was not

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1 for lack of trying by Mr. Ahmed. He was trying even after he
2 started dealing with somebody else to reengage Mr. Lustyik and
3 it just never actually happened. But he tried.

4 MS WOODS: That's right.

5 THE COURT: But it's also true, is it not, Ms Woods,
6 that Mr. Ahmed, as reflected in the text messages that I've
7 seen anyway, was a bit cagey. In other words he was saying we
8 got plenty of money here and we can pay you lots and lots of
9 money and you'll be rich and I'll be a hero but you got to show
10 me some really good stuff first and then we'll pay the money.
11 To which Thaler said, well, and maybe Lustyik as well, but
12 certainly Thaler said no, no, first you got to show me the
13 money, then we'll show you the information. That went back and
14 forth for a while and neither side budged and nothing further
15 happened. There was no further payment of money or exchange of
16 information.

17 MS WOODS: That's right. Mr. Ahmed expressed both a
18 concern that the information wouldn't be worth the money that
19 he was providing as well as a concern that these individuals
20 would take his money and run, and he would not have any
21 repercussions.

22 With respect to the harm caused by his crimes, it's
23 clear that this bribery scheme seriously undermined the FBI and
24 law enforcement agencies generally and the criminal justice
25 system. The citizens here in America depend on our law

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1 enforcement agents to be, to both enforce and to obey the law,
2 and to be above reproach. And Special Agent Lustyik failed in
3 that regard and Mr. Ahmed facilitated that through the scheme.
4 They convinced the Special Agent Lustyik to violate his oath,
5 to break the law instead of enforce the law, and in doing so
6 they undermined the integrity of the FBI and the criminal
7 justice system. Witnesses are going to be less likely to come
8 forward and make reports if they know that those reports could
9 be leaked to the subject of the investigation as happened here.

10 THE COURT: Is it possible, Ms Woods, is it possible
11 that, or do you think it's possible, might be a better way to
12 put it, that Mr. Ahmed had a worldview on corrupt public
13 officials based in part on his experience with the Bangladesh
14 system, where arguably corruption is more endemic, more sort of
15 understood to exist, and didn't quite fully appreciate the
16 shocking nature of what he was doing because he was applying
17 some sort of value that, some sort of view, worldview is best I
18 can come up with, view about corruption about corruption among
19 public officials that he had learned in the Bangladesh and he
20 was somehow applying that to the United States?

21 MS WOODS: It's my understanding that Mr. Ahmed moved
22 to America when he was approximately 13 years old.

23 THE COURT: That's true, and he's a U.S. citizen. But
24 he was trying to, for some reason, further the goals of some
25 political party ten thousand miles away or eight thousand miles

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1 away. He must have thought that was important.

2 MS WOODS: He was undoubtedly interested in Bangladesh
3 politics. But his standards and his awareness of what is and
4 what is not criminal in this country cannot be questioned. He
5 was educated here in college and throughout the conspiracy
6 there were indications from Mr. Thaler and from Special Agent
7 Lustyik that what they were doing was criminal, was illegal.
8 For example, they explained to him that they would remove the
9 individual's names who pulled the documents so it couldn't be
10 traced back to them. So Mr. Ahmed from that must have
11 understood that what he was getting he shouldn't have been
12 getting.

13 THE COURT: I'm not suggesting for one second that
14 Mr. Ahmed did not know he was committing crimes. That's not
15 what I'm saying. It's just so blatant and it's so gross. It's
16 almost as if he didn't fully appreciate -- of course it's
17 criminal, it's criminal in Bangladesh too, to bribe public
18 officials, probably. But you know everybody does it. The way
19 they do business over there, maybe that's the way we do
20 business over here. I'm just wondering if you think that's
21 what he thought. Statements he made to the agent or something
22 you learned during your investigation. It doesn't provide an
23 excuse or anything remotely connected to a defense, but it
24 might explain why he would engage in such ridiculous and absurd
25 behavior.

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1 I'm putting you on the spot I agree. I don't
2 personally know that many people who would think this is a
3 worthwhile endeavor. Let's just find an FBI agent and bribe
4 him and get some stuff. Most people around here at least that
5 I know it wouldn't even occur to them to do that. Because
6 they're not used to that sort of thing. They're not used to
7 hearing about, thank God, FBI agents who are willing to sell
8 their soul. They're just not used to hearing that sort of
9 thing. It would be a very unusual experience, which is why
10 this such a serious matter. To the extent it creates a public
11 perception that you can't trust an FBI agent if somebody
12 dangles a pile of money in front of them. That's a terrible
13 outcome if people actually begin to believe that, which is one
14 of the reasons why this is such a serious matter. I'm just
15 wondering whether there's some kind of cultural difference here
16 that would provide, some kind of context that would explain why
17 Mr. Ahmed would do what he did.

18 MS WOODS: I have not seen anything that would suggest
19 that his behavior was born of some cultural difference. Based
20 on his statements and the sentencing brief it appears as though
21 his motive was ego driven, that he was suddenly presented with
22 the opportunity to obtain information from a high level FBI
23 agent who was willing to sell his office for personal gain, and
24 Mr. Ahmed, interested in politics in Bangladesh, and interested
25 in being a player in that world, took advantage of the

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1 opportunity hoping that it would make him a leader in the party
2 and would ingratiate him with his political allies and he took
3 advantage of the situation for that reason. That doesn't mean
4 that he didn't understand while he was doing it that what he
5 was doing was dramatically out of bounds and was criminal. And
6 that's evidenced across-the-board. It's evidenced when agents
7 originally went to investigate this matter and approached him
8 for an interview and he lied to them about his conduct,
9 evidencing that he understood what he had done was wrong and he
10 knew it long before this investigation.

11 I'd also like to point out for the Court that
12 Mr. Wazed, whether or not the Court considers him a victim in
13 this case under the law, he was certainly harmed in some sense
14 by the leak of the information. His Social Security number,
15 his personal data is out there. And Mr. Ahmed sold it
16 upstream. And as Mr. Wazed explained to the court earlier
17 today, his address was leaked and publicized and as a result he
18 had to move his wife and child to a new home in D.C. His fear
19 for his safety is genuine and based on historical violence and
20 current day threats here in the United States. This is not a
21 joking matter for him.

22 THE COURT: I certainly agree with everything you've
23 just said. What he did say was fleshing out, but that's
24 essentially what he said to the probation officer as well.

25 MS WOODS: That's right.

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1 THE COURT: I'm not for one second suggesting that
2 this is, it doesn't really matter what happened to Mr. Wazed, I
3 don't really care, that's not what I'm saying. I'm saying that
4 he's not an official victim as that term is defined in that
5 portion of the guidelines. That's all I'm saying. I'm not
6 saying that this is not bad behavior on behalf of Mr. Ahmed.
7 I'm not saying it's not relevant. It is relevant to
8 sentencing. It absolutely is relevant to sentencing. I want
9 the record to be clear on that, I'm not pooh-poohing the
10 significance of the impact on Mr. Wazed. What I am saying is
11 that he doesn't fit, the square peg in the round hole
12 proposition.

13 MS WOODS: With regard to the harm, another harm is
14 that Mr. Wazed, as discussed, was investigated by a United
15 States agency and those reports were leaked to Mr. Ahmed and
16 leaked upstream. Prior to that Mr. Wazed and the Bangladesh
17 government did not know that the United States Government had
18 investigated them, and they do now as a result of this bribery
19 scheme, and that's another factor that this Court should
20 consider, the leak of that sensitive information to a foreign
21 government and to the public.

22 And while your Honor cannot and I cannot assess the
23 impact that it may or may not have on Mr. Wazed's reputation,
24 it certainly caused a harm to the United States' ability to
25 keep its investigations of foreign officials, highly sensitive

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1 information, from the public. And along those lines, it's
2 important that the Court also consider that Special Agent
3 Lustyik was in counter intelligence and his involvement in this
4 bribery scheme with Mr. Ahmed made him vulnerable to potential
5 blackmail down the road if things went awry. The fact that he
6 participated in these crimes, that he was willing to sell his
7 office and violate the law with these individuals, put this
8 nation at risk. Those individuals could very easily turn it
9 back around and certainly be making demands of him and
10 blackmailing him with evidence of the crimes that he's already
11 participated in.

12 THE COURT: That's a good point. Not a point that you
13 made in your brief, but I understand the point. It also seems
14 particularly relevant to Mr. Lustyik, a little bit so to
15 Mr. Thaler or Mr. Ahmed but not irrelevant. It's relevant.
16 Just so we're clear, is there any evidence that the fact of
17 this criminal investigation was leaked to the public and to a
18 foreign government caused any harm to any investigation, I'm
19 not talking about Wazed now, generally to the process if you
20 will, or that Mr. Lustyik ever was subject to any kind of
21 blackmail?

22 MS WOODS: With respect to the first question, I
23 cannot present any evidence today that it impeded or obstructed
24 an ongoing investigation. I'm aware that the State Department
25 was involved when the reports were found and were leaked and

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1 found in the possession of a journalist in Bangladesh and the
2 Prime Minister discovered them and realized for the first time
3 that the U.S. authorities had been investigating their son. I
4 know there were investigations that took place and meetings
5 that took place as a result of that. But to my knowledge -- my
6 knowledge of those meetings is quite limited. With respect to
7 the national security risk I think that's the way we described
8 them in the brief. They were risks. There's no evidence that
9 he was blackmailed or forced to turn over classified
10 information or take other steps as a result. But he was
11 certainly open to the risk of that because of his participation
12 in these criminal activities and vulnerable to that. And
13 that's another factor that in the government's view your Honor
14 should consider in determining the appropriate sentence.

15 If the Court doesn't have any questions ...

16 THE COURT: I don't. You were very kind to answer all
17 the questions I asked you even though it broke up your
18 presentation. Thank you for for doing that. Mr. Wazed is not
19 here. Unlike the prior proceeding, he's not here to provide a
20 victim impact statement, is that correct?

21 MS WOODS: That's correct. He's on his way back to
22 Washington, D.C., but he did ask that your Honor consider it at
23 this hearing.

24 THE COURT: Mr. Henry, do you wish to be heard?

25 MR. HENRY: I do, your Honor, briefly. I'm not going

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1 to go back over the sentencing memo. It's typically not very
2 helpful. Here's what I will say and what I want to talk to the
3 Court about and I know you'll probably have a number of
4 questions. I want to start with a number of things that you
5 and Ms Woods talked about.

6 One being the scheme and how it stopped. This is a
7 situation, taken in the totality, I agree with the Court, I
8 agree with the government, more importantly Mr. Ahmed
9 understands and has expressed his understanding to me, that
10 this is a terrible case. Not only in the sense that the things
11 happened that happened and we run into all of these issues and
12 there's the loss of trust, there's all of the things that come
13 along with an offense like this. Secondly, this is simply a
14 tragedy that these three individuals came up with this
15 hare-brained idea to do these things and now all of them face
16 tremendous penalties under federal law. Their families have
17 been tremendously affected. Mr. Ahmed's family, who is here
18 with us, they pay the price for these things. Mr. Thaler's
19 family, who was here earlier, they pay the price for these
20 things. And so I don't want it to be lost on the Court that
21 Mr. Ahmed understands very clearly that what happened in this
22 case is not appropriate, was way out of bounds, and can never
23 happen again and shouldn't happen in other contexts.

24 What I will say though in regard to this, your
25 question about a worldview and why is it that people make the

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1 decisions that they make. You asked Mr. Thaler that or
2 speculated about why people do some of the things that they do.
3 I don't pretend to know the answer to that and I don't know
4 that Mr. Ahmed even if I asked him, and frankly I have, could
5 explain in a very good way why he got himself in the situation
6 he got himself in.

7 It's my view and my view alone that it is a
8 combination of what Ms Woods said and what the Court suggested
9 in that Mr. Ahmed was in a situation where he felt like he
10 could be a big shot. I gather that not just from the
11 circumstances of the case but when you look at what the
12 government has mentioned, these FBI documents that he had on
13 his computer with the wrong address and misspelled bureau and
14 so forth. Mr. Ahmed in my estimation, and I don't want anybody
15 to take offense to this, but in my interactions with him, has a
16 worldview that is somewhat juvenile, I would think. And I'm
17 saying that frankly to the Court and Mr. Ahmed. He got in a
18 situation where he felt like he could play super spy and he got
19 swept away and made these decisions that he made knowing that
20 he probably shouldn't be doing that. But I don't think his
21 objective during this whole period of time was to specifically
22 target an FBI agent to get specific classified documents so
23 that at the end of all this he could disclose those to other
24 people and it be a really big thing. I think his goal was to
25 gain information about certain individuals and to provide them

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1 to certain people in his political party, those people being
2 family members and friends who may or may not have pull in that
3 particular party to begin with. I don't know. And what shows
4 us that is that Mr. Ahmed didn't find Mr. Lustyik. The Court
5 talked about this earlier. Mr. Thaler was sort of the
6 middleman. It was the suggestion from Thaler that Ahmed and
7 Lustyik sort of to do this and he brokered that deal. But for
8 Mr. Thaler this probably never would have happened.

9 THE COURT: I would say it definitely never would have
10 happened. But it doesn't excuse Mr. Ahmed.

11 MR. HENRY: It doesn't excuse the conduct. That's
12 absolutely right. But when Ms Woods said this scheme stopped
13 because he found somebody else, maybe that's true. It stopped.
14 But that somebody else was a private investigator. Mr. Ahmed
15 was not looking for classified documents necessarily. He was
16 not looking for information that belonged to the government
17 necessarily. He went to a private investigator and said if you
18 can't get me information on Wazed, whatever it is, I'll get it
19 from somebody else. And he went to a private investigator who
20 clearly can't get classified documents, at least I hope not,
21 and cannot violate the trust of the FBI and the government and
22 these other places.

23 That was not Mr. Ahmed's intent. It was certainly to
24 get information and to embarrass and do certain things
25 politically. We don't contest that at all. But when you look

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1 at the circumstances of this offense -- the Court said earlier
2 you have to punish a person and the first thing that the Court
3 puts in there is the nature and circumstances of the offense.
4 Well, the nature and circumstance of this offense, if you take
5 it in a vacuum, a person bribes an FBI agent to get classified
6 documents, that is a terrible, terrible thing, it should never
7 happen. But when you look at it in the totality of the
8 circumstance and you take not only the nature and circumstances
9 of the offense but all of the other 3553(a) factors including
10 his history and characteristics, the evidence that the
11 government presented, we presented, the need to promote respect
12 for the law and all of those things in conjunction, this
13 offense while extremely serious, we have to determine, the
14 Court has to determine what is the appropriate offense for
15 that. On what scale of: This is the most awful thing that
16 could have happened and it was for a terrible, terrible
17 purpose, or is this something awful that happened that
18 Mr. Ahmed got caught up in.

19 I can tell you this maybe is the most unsophisticated
20 bribery scheme ever for something that on the back end is very
21 complicated. Counter intelligence information, SAR information
22 that these financial institutions all over the world are
23 required to keep up with. I don't know that Mr. Ahmed even
24 when he got it knew what it was. So the unsophisticated nature
25 of Mr. Ahmed, number one.

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1 Number two, the unsophisticated nature of Mr. Thaler.
2 And then you have Lustyik who is clearly the most involved
3 sophisticated individual out of the three.

4 Mr. Ahmed, and I put it in my brief, he is a good
5 person. I believe that. I think he made bad decisions but he
6 is a good person. I think he has a family that loves him. I
7 think that not for lack of trying he finds himself in a
8 position being 37 years old sitting in front of this Court not
9 having achieved much in his life. He went to college. That's
10 an achievement. He played tennis when he was young, and did
11 really well with that, and that's an achievement, but that's
12 gone. He may get promoted to a more managerial position, but
13 the money he makes at that job is probably not that much. He
14 lives at home. All of those factors, while not talking about
15 Mr. Ahmed in a negative way, his life circumstances don't exude
16 a very complex, complicated player in a game trying to do those
17 things that perhaps these charges and the case suggests.

18 When you look at those things and the factors that we
19 presented in our sentencing memo, Mr. Ahmed served time in jail
20 already. More than the other two individuals, well, maybe not
21 Mr. Lustyik, but certainly Mr. Thaler, he served approximately
22 five months in Valhalla. That was probably the most terrible
23 time Mr. Ahmed spent in his entire life. He's been on
24 supervised release, very strict initially, still fairly strict
25 although he gets to go and work. He has dug himself up out of

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1 the hole that he got himself in and placed himself in a
2 position where he can hopefully succeed. When you look at
3 sentencing about how do we punish somebody, and there has to be
4 punishment for this case, just like in every federal criminal
5 case, there is a level of punishment. But also you have to
6 look at how do you rehabilitate the whole person and put him
7 back out in a society where he will eventually end up as a
8 productive citizen.

9 So one of the questions the Court is probably asking,
10 because I was purposely fairly vague about it in my sentencing
11 memo, is what sentence are we really asking for. But the
12 reason I was vague about it is because I don't know. I don't
13 know in this case what the appropriate sentence is. I racked
14 my brain. I was up, I sat and stared at that sentencing memo
15 for hours on end. Do I think probation is appropriate in this
16 case? I don't know. If I'm talking to you, one person to
17 another, Mr. Ahmed, maybe it's not. Is a 70 to 87 month
18 sentence in this case appropriate? No, I don't think it is.

19 But I think there is a combination of things in this
20 case where Mr. Ahmed could be sentenced, punished but allowed
21 to maintain his job, go on about his life and probably never
22 ever commit another crime again. In fact, it's statistically
23 almost certain that he won't commit another crime. And so for
24 those reasons I would simply leave it to the Court, obviously
25 it's the Court's decision to make in any event, to determine

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1 what the appropriate sentence is in this case.

2 But it is important to understand that Mr. Ahmed knows
3 what he did. He has learned a lesson from this. He will carry
4 that lesson with him for the rest of his life. When you look
5 at also disparity in sentencing and the need to deter others
6 from committing similar offenses, deterrence is really the main
7 reason, I guess, that they don't want disparity in sentencing.
8 They want everybody to think it's fair and they want everybody
9 to know what's coming down the road if you do the same as some
10 other person. The guidelines calculate those sentences in a
11 one-way ratchet up. There are very few ways in a sentence that
12 you can go down. That's why you have to consider all of
13 the other things under 3553(a). I think all of those other
14 considerations, this is a serious offense, that calls for a
15 serious sentence. There needs to be promoting respect for the
16 law. But respect for the law includes: I respect the law, I
17 don't want to break it because I'll get punished, but I also
18 want to respect the law because it's fair, because this person
19 got what was coming to them but it wasn't overly punitive.

20 The seriousness of the offense. Deterrence in this
21 particular instance, and I've been in a lot of federal
22 courtrooms across the country and have engaged in discussions
23 about those things, and included a lot of studies, I put them
24 in there not to say that deterrence is useless. But if I was
25 to pick up the newspaper tomorrow and I looked at Bob McConnell

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1 who got sentenced or General Petraeus who got sentenced or any
2 other person who committed a serious bribery or government
3 secret offense and I think they got this many years in prison,
4 the first thing that comes to my mind is not that's a lot of
5 time or not much time. The first thing that comes to my mind
6 is that they got caught and they got punished. It is the
7 punishment factor not the amount of time that is the point of
8 all that.

9 Mr. Ahmed has already been punished to a certain
10 extent. And he's going to get some additional punishment. He
11 knows that. You look at that and then you look at disparity at
12 sentencing. Is it fair, and I know Mr. Ser talked about this
13 earlier, and those are different circumstances in a lot of
14 different ways, with General Petraeus, but Mr. Ahmed, who did
15 these things in exchange for money and potentially the feeling
16 of authority or power or to gain something in that respect is
17 one thing. Petraeus doing it in terms of favors from his
18 ladyfriend, greed, lust, all of those things are things by
19 which people are motivated and are considered payment. You
20 don't just have to get payment to get paid. You can get paid
21 other ways for information.

22 So if you look at that, he's a high-ranking public
23 official, he was the head of the CIA. You got Mr. Ahmed who
24 worked at Macy's as a shoe salesman. He gets a misdemeanor
25 offense and does some probation for giving secrets that are so

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1 much more classified than the information that Mr. Ahmed got,
2 does that promote respect for the law? Is that disparity in
3 sentencing. I don't know. Luckily, I'm not in the Court's
4 shoes who has to make that decision. But in this instance, is
5 a significant term in jail the correct answer? I don't think
6 so. I gave you the reasons why in addition to the reasons that
7 I'm giving you now.

8 So we'd ask the Court to fashion a sentence that is
9 punitive in nature, any sentence that you give I think will be,
10 Probation, even Probation is punitive. But also allows
11 Mr. Ahmed the opportunity to continue on the path that he's
12 gotten himself on now which is working, working well, getting a
13 lot of commendations from his employer, potentially and
14 hopefully making the jump up to the next higher level and
15 living his life in a way that he always has and that we know
16 that he can continue to live his his life.

17 One other point is that unlike Mr. Lustyik and
18 Mr. Thaler, this is Mr. Ahmed's first offense ever. So he sits
19 in a very different position than those two individuals. This
20 is not an ongoing thing. This is not an I am a fraudster, I'm
21 a briber, I'm going to do this again and again and again.
22 Mr. Ahmed got caught up in something way over his head. He got
23 swept away. He's sitting here paying the price for that. I
24 think the point has been made, the lesson has been learned. So
25 I would, unless you have any other questions, submit the

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1 sentencing memorandum as my oral argument and requesting an
2 alternative to straight incarceration in this particular case.

3 THE COURT: All right. Thank you, Mr. Henry.

4 Mr. Ahmed, do you have anything that you would like to
5 say or any information that you would like to present before I
6 impose sentence?

7 THE DEFENDANT: I'd like to make a statement. Your
8 Honor, I'd like to just say how sorry I am for what I did was
9 wrong.

10 THE COURT: You got to speak up so I can hear you.

11 THE DEFENDANT: I'd like to say I would just say how
12 sorry I am what I did was wrong. I always try to do good by
13 others and before this I never got myself in trouble. Having
14 been in jail going through the criminal court process and being
15 under the supervised release was the most horrific moment I
16 experienced in my life. Being in jail I also reflect my
17 mistake what I did, and I learned my lesson. And I come from
18 very close to my family and all my family are very close to me,
19 and they all suffered with me. And what I did it caused a
20 great deal of pain to my family. And I do hope my, I hope my
21 family and my country and this Court they can forgive me what I
22 did and I learned my lesson from all that.

23 THE COURT: Okay. Thank you very much, sir. You may
24 have a seat. Again, thank you to the lawyers for doing an
25 excellent job in this case from beginning to end.

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1 Let me say first that in deciding the appropriate
2 sentence in this case, I've considered all of the statutory
3 factors as set forth in Section 3553(a) of Title 18. There's
4 no question that this was a serious offense. Mr. Ahmed offered
5 to pay large sums of money to a senior FBI agent in exchange
6 for confidential information about a political rival. He
7 obtained several internal documents from Lustyk. He paid
8 Thaler and Lustyk a thousand dollars for that information. By
9 paying and offering to pay cash bribes to Lustyk, Ahmed
10 undermined the public trust in an important public institution,
11 the FBI. Obviously, he could not have done this without the
12 willing participation of Mr. Lustyk, and certainly
13 Mr. Lustyk's culpability is much greater than Mr. Ahmed.

14 But Mr. Ahmed's conduct was designed to and did in
15 fact compromise the integrity of a public official. Bribery
16 and corruption of this sort is what breeds cynicism and
17 distrust among the public and undermines the faith citizens
18 should have in their public institutions and officials,
19 especially law enforcement officials like Mr. Lustyk.

20 It does not appear that what Mr. Ahmed did compromised
21 national security, fortunately. But given that Mr. Lustyk was
22 a counter intelligence agent, it certainly had the potential to
23 do so. Moreover, Ahmed's purpose in bribing Lustyk was to
24 obtain information with which he could embarrass prominent
25 members of the ruling party in Bangladesh which evidently is

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1 the rival of the political party that he apparently supported.
2 And although it does not appear that Individual Number 1 was
3 actually harmed, Ahmed's conduct was really reprehensible and
4 at least potentially harmful to Individual 1 and his family.
5 On top of everything else, he filed a deliberately false sworn
6 statement during the course of this case which was designed to
7 undermine the integrity of this judicial proceeding.

8 So in my view, Mr. Ahmed is a person lacking in
9 integrity who feels entitled to do anything he wants to get
10 what he wants regardless of what the law requires and
11 regardless of the consequences. In some ways that's more
12 serious than someone like Mr. Thaler, for example, who was just
13 in it for the money, he wasn't in it for the glory or to
14 inflict embarrassment or humiliation on someone else, even
15 though he certainly knew that that's what was going on. But to
16 me it feels like it's worse that if you do something like this
17 and it's not for the money. If you're doing it for the purpose
18 of inflicting embarrassment and humiliation or scoring
19 political points, in a way that's worse than just doing it for
20 the money which is what Mr. Thaler did.

21 So the conduct involved here is extremely serious and
22 it warrants a serious prison sentence and that means a sentence
23 in excess, frankly, of what I've already imposed on Mr. Thaler.
24 Having said that, the guidelines range of 70 to 87 months is
25 somewhat skewed because of the ten-level increase based on the

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1 value of the payments. The parties agree that the value
2 exceeded \$120,000. But I believe that that figure somewhat
3 overstates the true magnitude of the scheme because after all,
4 it was in the end a thousand dollars that was exchanged for a
5 couple of documents. Lustyik, Thaler -- don't mistake what I'm
6 saying for the suggestion that this was not an extraordinarily
7 serious offense. It's not only extraordinarily serious, it's
8 just shocking that this kind of thing could actually happen.

9 In my experience when I think about people who want to
10 bribe FBI agents usually it has something to do with some
11 foreign government like the former Soviet Union trying to turn
12 an agent and make him a double agent or something like that.
13 This was just Rizve Ahmed, for goodness sake, who is hardly a
14 sophisticated person, but what he did was of the magnitude that
15 you can't overstate the significance of it. It's just that I
16 think that the \$120,000 figure which does drive up the
17 guideline range substantially somewhat overstates the magnitude
18 of the offense.

19 These folks, Lustyik, Thaler and Ahmed talked about
20 paying tens of thousands of dollars to Lustyik in return for
21 confidential information, but the actual amount paid was a
22 thousand dollars. If the guidelines level was based on that
23 amount the sentencing range would be 24 to 30 months rather
24 than 70 to 87 months. I will respect the agreement on the
25 value of the payments but nonetheless given the large -- and it

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1 does drive the guideline range and as I said the guideline
2 range is 70 to 87 months -- but given the rather dramatic
3 discrepancy between what was actually pay which was a pittance
4 and the much larger amount that was contemplated to be paid
5 upon which the sentencing range is based I believe that an
6 appropriate sentence should be closer to the level 17 range
7 than the level 27 range. In other words, I think the fact that
8 the ten-level enhancement somewhat overstates the seriousness
9 of the offense is a mitigating factor and warrants a
10 nonguideline sentence or a sentence below the guidelines.

11 However, this was a nonviolent offense committed by a
12 first time offender with a rather exaggerated view of his own
13 self-importance, the word grandiosity comes readily to mind,
14 and there's no evidence anyone was actually harmed physically
15 or otherwise by the improperly disclosed confidential
16 information. Also, and this of course is important, Mr. Ahmed
17 is not a public official himself. He's not the one who
18 accessed the confidential files. And he's not the one who took
19 an oath that he failed to honor, like Mr. Lustyik. So in that
20 sense he's less culpable than Mr. Lustyik.

21 He is not a minor participant in this offense. He's
22 the instigator if you will. He, as I said, did what he did for
23 personal aggrandizement I suppose or for other purposes. In
24 some ways I think that's worse than just doing it for the
25 money. He filed a false affidavit, it wasn't technically an

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1 affidavit, but a declaration under the penalty of perjury in
2 this case. Those things combined with the fact that the
3 underlying conduct that was so serious do warrant a very severe
4 prison sentence in this case.

5 My conclusion is that under the circumstances, a
6 sentence of 42 months, which is, as we know, twelve months
7 longer than the sentence I imposed on Mr. Thaler, 42 months
8 imprisonment followed by two years of supervised release is
9 sufficient but not greater than necessary, taking into
10 consideration the nature and circumstances of the offense, the
11 history and characteristics of the defendant, and the need for
12 the sentence imposed to reflect the seriousness of the offense,
13 promote respect for the law, provide just punishment, afford
14 adequate deterrence, and importantly here, avoid unwarranted
15 sentencing disparities among similarly situated defendants.
16 The three defendants in this case are not identically situated
17 but they're similarly situated. They committed the same
18 crimes. And there should be additional punishment for
19 Mr. Ahmed for the reasons I've stated relative to Mr. Thaler.
20 But I don't want that to be so, I don't want there to be so
21 much of a discrepancy between the sentences that I imposed on
22 those two defendants that it would constitute an unwarranted
23 disparity. So I believe that a 42 months sentence avoids
24 unwarranted sentencing disparity.

25 This is a very serious sentence. And I think it

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1 properly accounts for all the sentencing factors in the
2 statute. I don't want to run the risk of imposing a sentence
3 that is so severe on someone who is sufficient a sap, such an
4 incompetent fool. I don't say that to be mean. I just say it
5 because it's true. I worry that at some point the severity of
6 the sentence looks like cruelty or it looks like some judge who
7 just wants to grandstand for his own reasons. And I don't want
8 to do that. I don't want to run the risk of promoting
9 disrespect for the law either by Mr. Ahmed or his family or
10 anyone else for that matter. And I don't think that a sentence
11 in excess of the 42 months affords any significantly greater
12 deterrence to criminal conduct. The statute talks about
13 adequate deterrence. And I think that 42 months affords
14 adequate deterrence.

15 At the same time, anything less than the 42 months
16 would not adequately reflect the serious nature of seeking to
17 corrupt and actually corrupting an FBI agent occupying a highly
18 sensitive public position, especially when that behavior is
19 compounded by a willful attempt to obstruct the administration
20 of justice in this case.

21 I well add the following, that the sentence I intend
22 to impose is sufficient but not greater than necessary to
23 comply with the purposes of sentencing set forth in the statute
24 whether or not Individual 1 is deemed an official victim. In
25 other words, I'm taking into consideration all of the facts

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1 relating to Mr. Wazed and what Mr. Ahmed was trying to do and
2 the effect that it had on Mr. Wazed and his family. I don't
3 believe that he's an official victim. We get hung up on
4 terminology sometimes which is why the current system is far
5 better than the system that existed preBooker. We still have
6 to look at the guidelines as guidelines, a recommendation for
7 what's appropriate. And that's exactly what I'm doing here.

8 But after I've considered all of these factors
9 including all the facts relating to Mr. Wazed and after I've
10 taken them all into account I feel that the sentence that I
11 intend to impose, 42 months, is the appropriate sentence, and
12 that would be true even if I were to apply the two-level
13 sentencing enhancement under the official victim provision. So
14 either way the sentence would be 42 months.

15 Does either counsel know of any legal reason why the
16 sentence should not be imposed as stated?

17 MS WOODS: No, your Honor.

18 THE COURT: Mr. Henry?

19 MR. HENRY: No, your Honor.

20 THE COURT: Mr. Ahmed, please stand.

21 It is the judgment of this Court that you be committed
22 to the custody of the United States Bureau of Prisons for a
23 total term of 42 months to be followed by two years of
24 supervised release. The standard conditions of supervised
25 release 1-13 shall apply. The following mandatory conditions

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1 shall also apply. They're on page 27 of the presentence
2 report. I need to read them into the record. The defendant
3 shall not commit another federal, state or local crime. The
4 defendant shall not illegally possess a controlled substance.
5 The defendant shall not possess a firearm or destructive
6 device. The defendant shall refrain from any unlawful use of a
7 controlled substance. The mandatory drug-testing condition is
8 suspended based on the Court's determination that the defendant
9 poses a low risk of future substance abuse.

10 The following special conditions shall apply. The
11 defendant is to report to the nearest Probation Office within
12 72 hours of his release from custody. And the defendant shall
13 be supervised by his district of residence, meaning that if his
14 residence is in Connecticut, he'll be supervised by the
15 District of Connecticut.

16 I am not imposing a fine because the defendant does
17 not have the ability to pay a fine. Restitution is not
18 applicable here. I am imposing the mandatory special
19 assessment of one hundred dollars per count for a total of two
20 hundred dollars which is due immediately.

21 The foregoing constitutes the sentence of the Court.

22 You may have a seat, sir. Mr. Ahmed you have the
23 right to appeal your sentence subject to any limitations on
24 that right contained in your plea agreement with the
25 government. If you are unable to pay the cost of an appeal you

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1 may apply for leave to appeal without payment of costs. A
2 notice of appeal must be filed within 14 days after the entry
3 of judgment. Therefore, if you do wish to appeal, you must
4 advise your attorney to prepare and file a notice of appeal
5 immediately, or if you request, the clerk will immediately
6 prepare and file a notice of appeal on your behalf.

7 There are open counts in which the defendant is named,
8 I believe it's Counts 1, 5 and 6. Does that sound right,
9 Ms Woods?

10 MS WOODS: Yes, your Honor. We ask that those counts
11 be dismissed.

12 THE COURT: Any objection?

13 MR. HENRY: No objection, your Honor.

14 THE COURT: Counts 1, 5 and 6 are dismissed on the
15 government's motion. Mr. Henry, do you have suggestions that I
16 include in the judgment in terms of recommendations to the BOP?

17 MR. HENRY: We'd ask that he be placed at a facility
18 as close to his home in Danbury, Connecticut as possible.

19 THE COURT: I will do that. Any other recommendations
20 to the BOP?

21 MR. HENRY: We'd ask that he get credit for time
22 served.

23 THE COURT: He will get credit for time served because
24 he was in custody only on this case. By operation of law he
25 will get that. I know there's been discussion in the past

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1 about whether Mr. Ahmed should be released on bail. I don't
2 remember all the details but we certainly discussed that on a
3 prior occasion and I did grant his application to be released.
4 My understanding is that he's been fully compliant with all the
5 conditions of his release since then.

6 Are you asking that the defendant be given a surrender
7 date?

8 MR. HENRY: Yes, your Honor.

9 THE COURT: What's the government's position on that?

10 MS WOODS: The government certainly considered
11 objecting to self-surrender, given both the nature of the
12 offense, the length of the sentence, as well as Mr. Ahmed's
13 demonstrated willingness to lie not just to investigating
14 agents but to this Court in this case. In addition, as your
15 Honor will recall, he has close family contacts in another
16 country in which he speaks the language to which he could flee.
17 And I think it was a day before his arrest he had booked a
18 flight out of this country. All of that is reason for concern
19 in the government's view.

20 However, if the Court is inclined to grant
21 self-surrender in this case, the government would request that
22 it be a brief period of time.

23 THE COURT: It has to be long enough to let the Bureau
24 of Prisons do what it has to do, which is to figure out where
25 to put him. I don't have to wait for the Bureau of Prisons to

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1 designate an institution I guess, I could order him to
2 surrender to the marshals. Ordinarily, if we're allowing
3 someone to stay out pending designation, the period of time
4 conventionally is 45 days. That would get us to about April
5 20th. What exactly are the conditions? Putting aside -- the
6 home was put up, his parents co-signed?

7 MR. HENRY: I believe that's correct. I think it's a
8 hundred thousand dollar cash bond was put up as well.

9 THE COURT: Who put that up?

10 MR. HENRY: I believe his parents and his brother.

11 THE COURT: They sure wouldn't want to lose that
12 money.

13 MR. HENRY: They certainly don't want to lose that
14 money.

15 THE COURT: Does he have any kind of electronic
16 monitoring?

17 MR. HENRY: Yes, he has the monitoring.

18 THE COURT: He's got basically a curfew which is
19 enforced with the electronic monitoring?

20 MR. HENRY: That's correct.

21 THE COURT: Ms Woods, do you want to say something
22 further?

23 MS WOODS: No, your Honor.

24 THE COURT: I'm going to grant the application. I'm
25 going to allow the defendant to self-surrender to an

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1 institution to be designated by the Bureau of Prisons on April
2 20, 2015 at two p.m. So bail will be continued under the
3 current conditions until then.

4 Mr. Ahmed, what that means is that you're still on
5 bail. That hasn't changed. You're still obligated to comply
6 with all of the conditions of release that have previously been
7 set. I'm confident that you will comply and that you won't do
8 anything stupid. When I say stupid, I mean stupid in terms of
9 disregarding orders of the Court, but also stupid in the sense
10 of disregarding the support and faith that your family and
11 friends have shown in you. That would be unbelievable -- I
12 mean people do stupid things of course, but I would hope that
13 you've thought about this and realize the consequences for your
14 behavior are serious. Like going out to eat in a restaurant,
15 when the check comes you got to pay the check. Now it's time
16 to pay the check. This is hardly a surprise, it should not be
17 a surprise to you that the check for this particular meal is
18 pretty expensive and you've got a lot of payment to make.
19 Don't make the situation worse by violating my confidence or
20 betraying my confidence in you and betraying the confidence
21 that your family has shown in you. Do you understand all that?
22 You need to be fully compliant with all the conditions of your
23 release up until now and you need to show up at the Bureau of
24 Prisons institution designated and you'll get notice of that on
25 April 20th at two p.m. wherever that is. That could be

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1 somewhere else in the country and you're going to have to
2 figure out a way to get there, okay?

3 THE DEFENDANT: Yes.

4 THE COURT: I always like to add one thing at the end
5 which is, especially in situations where I just think the
6 conduct is just so not only criminal but it's so foolish, it's
7 so absurd and tragic. It's tragic for you but not just you.
8 It hurts other people. It hurts your family, it hurts the FBI,
9 it hurts the process. It's just bad on so many levels. And
10 it's just tragic. And I do wish you the best of luck. Believe
11 me, nothing that I've said was said for the purpose of
12 demeaning you or being cruel. I'm just trying to speak the
13 truth as I see it and I think that the consequences of what
14 you've done are serious and you need now to pay your debt for
15 that. So good luck to you. We're adjourned.

16 THE COURTROOM DEPUTY: All rise.

17 This Court will be in recess.

18 (Record closed)
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